

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 43

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte  
CHOR K. YEUNG

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Appeal No. 2002-0229  
Application No. 08/619,976

HEARD: November 7, 2002

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Before LIEBERMAN, DELMENDO and POTEATE, Administrative Patent Judges.

LIEBERMAN, Administrative Patent Judge.

**DECISION ON APPEAL**

This is an appeal under 35 U.S.C. § 134 from the decision of the examiner refusing to allow claims 12 through 17 and 20 through 22. Claims 1 through 8, 11, 18 and 19 stand withdrawn from consideration as subject to a restriction requirement. Claims 9 and 10 have been cancelled.

## **THE INVENTION**

The invention is directed to an article having a label marked with a laser over part of the surface. The article has a surface comprising polytetrafluoroethylene (PTFE), a titanium oxide pigment and an organic polymer selected from the group consisting of arylene sulfide polymers, polyaryl sulfones, and polyetherketones. Additional limitations are described in the following illustrative claims.

## **THE CLAIMS**

Claim 12 is illustrative of appellant's invention and is reproduced below.

12. A marked article, comprising:

an article with a surface comprising a composition comprising:

- A) PTFE;
- B) 0.01 to 5 wt.% of at least one titanium oxide pigment; and
- C) 0.1 to 5 wt% of at least one organic polymer selected from the group consisting of arylene sulfide polymers, polyarylsulfones and polyetherketones,

wherein said surface of said article has label marked with a laser over less than an entire surface of said composition.

### **THE REFERENCES OF RECORD**

As evidence of obviousness, the examiner relies upon the following references:

Mizuno et al. (Mizuno)	4,894,419	Jan. 16, 1990
Bradfield	5,091,284	Feb. 25, 1992
Nishii et al. (Nishii)	5,320,789	Jun. 14, 1994
Yeung	5,415,939	May 16, 1995

### **THE REJECTIONS**

Claims 12, 17, and 20 through 22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Nishii in view of Mizumo.

Claims 13 through 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Nishii in view of Mizumo and further in view of Yueng and Bradfield.

### **OPINION**

We have carefully considered all of the arguments advanced by the appellant and the examiner and agree with the appellant that the rejections of the claims under §103(a) are not well founded. Accordingly, we reverse both rejections.

The Rejection under § 103(a)

"[T]he examiner bears the initial burden, on review of the prior art or on any other

ground, of presenting a *prima facie* case of unpatentability." See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

The claimed subject matter before us requires that, "said surface of said article has a label marked with a laser over less than an entire surface of said composition." See claim 12. In contrast the composition of Nishii, although drawn to a laminated composition which overlaps the three component compositions of the claimed subject matter, utilizes laser light to modify the surface of an article in a different manner and to perform a separate and distinct function. See column 1, lines 20-25. The laminate of Nishii is prepared by irradiating a laser light on the surface of a fluorine resin containing a light absorbing material and a heat resistant light absorbing polymeric material. See column 1, lines 11-16. Significantly, the function of the laser treatment is to improve among other characteristics, adhesion and wetting properties. See column 1, lines 17-20. The fluorine resins disclosed include and exemplify PTFE almost exclusively. See column 2, line 53 to column 3, line 3, and Examples 1-14 and 16-26. The heat resistant light absorbent polymeric material include among a limited number of polymers, poly (ether ether ketone), (PEEK), polyether ketone, polyphenylene sulfide, polysulfone and polyethersulfone falling within the scope of the claimed subject matter. See column 3, lines 4-17. The heat resistant light absorbing polymer may be present in an amount of from about 1 to about 20% by weight based upon the total weight of the fluorine resin. See claim 10. We find that the utilization of PEEK in amount falling within the scope of

the claimed subject matter is exemplified in Example 7. We further find that light absorbing material including titanium dioxide in an amount of at least about 1% by weight and more preferably from about 5 to 33% by weight and most preferably from about 5 to 30% by weight based upon the total weight of the fluorine resin and the light absorbing material is disclosed by Nishii at column 3, lines 18-50. Example 28 is directed to a composition containing 95 wt. % PTFE and 5 wt. %  $\text{TiO}_2$ . Indeed, the examples disclose treatment with a laser of 10% of the surface area of samples which constitute less than the entire surface of said composition.

Notwithstanding our above findings, the laser treatment disclosed in Nishii performs an entirely different and distinct function from that required by the claimed subject matter. A careful reading of Example 1 indicates preparation of a 300 micron thick, 30 mm wide and 150 mm long sample. See column 5, lines 31-33. The sample was thereafter irradiated through a mask so that an area of 30 mm in width and 15 mm in length was irradiated with a laser. See column 5, lines 39-43. Thereafter an epoxy resin was applied to a stainless steel plate and the sample, and the adhesive applied surfaces were bonded together. See column 5, lines 53-58. The Peel strength was thereafter measured for both the laser treated surface and for an untreated surface. See column 5, line 53 to column 6, line 4. Significantly, the portion of the surface treated by the laser is utilized for bonding to another surface. There is no disclosure or teaching that any marking or other alteration appears on the remaining surfaces of the article. Accordingly, Nishii in and of itself is

insufficient to establish a prima facie case of obviousness with respect to the claimed subject matter.

As to the balance of the references, Mizumo is directed to an entirely different composition utilizing a major amount of the polymeric component described supra. In contrast to Nishii, the other references to Yueng and Bradfield, applied only with respect to claims 13 through 16 are each directed to multilayer laser markable tape electric cables respectively. The examiner relies upon Yueng for its disclosure to utilize raw or unsintered PTFE as an additional polymer in the manufacture of the laminate of Nishii. See Answer, page 5. Bradfield in contrast is relied upon, "to make the articles of Nishii in the form of a cable." *Id.* The references are relied upon to neither suggest nor teach label marking of the article of the laminated article of Nishii and we decline to enter any such findings. Accordingly, based upon the above findings and analysis, the examiner has failed to establish a prima facie case of obviousness with respect to the claimed subject matter. It follows that the rejection of record is not sustainable.

Because we reverse on this basis, we need not reach the issue of the sufficiency of the showing of unexpected results. In re Geiger, 815 F.2d 686, 688, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987).

### **DECISION**

The rejection of claims 12, 17, and 20 through 22 under 35 U.S.C. §103(a) as being unpatentable over Nishii in view of Mizumo is reversed.

The rejection of claims 13 through 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Nishii in view of Mizumo and further in view of Yueng and Bradfield is reversed.

The decision of the examiner is reversed.

**REVERSED**

PAUL LIEBERMAN  
Administrative Patent Judge

ROMULO H. DELMENDO  
Administrative Patent Judge

LINDA R. POTEATE

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